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U.S. DISTRICT COURT
DISTRICT OF UTAH

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-
Defendant,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-
Plaintiff.

**DEFENDANT/COUNTERCLAIM-
PLAINTIFF IBM'S MOTION TO STRIKE
AFFIRMATIVE DEFENSES**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke Wells

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Pursuant to Rules 12(f) and 9(b) of the Federal Rules of Civil Procedure Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”), through counsel, hereby moves to strike the Fifth, Fifteenth and Nineteenth Affirmative Defenses asserted by Plaintiff/Counterclaim-Defendant The SCO Group, Inc. (“SCO”) in its Answers to IBM’s Amended Counterclaims.

Under Rule 12(f), the Court “may order stricken from any pleading any insufficient defense”. Fed. R. Civ. P. 12(f). Rule 9(b), in turn, requires that, “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.”

As detailed in IBM’s Memorandum in Support of Motion to Strike Affirmative Defenses, SCO’s Fifth, Fifteenth and Nineteenth affirmative defenses—which allege fraud and inequitable conduct—are improperly pleaded under Rule 9(b) and thus should be stricken. Specifically, SCO fails to allege any facts concerning the fraud that IBM is alleged to have committed. Under any interpretation of Rule 9(b)’s requirements, therefore, SCO’s affirmative defenses are defective.

DATED this 10th day of November, 2003.

SNELL & WILMER L.L.P.



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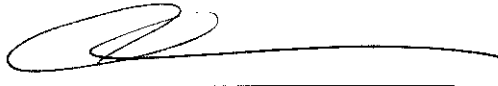
CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2003, a true and correct copy of the foregoing **DEFENDANT/COUNTERCLAIM PLAINTIFF IBM'S MOTION TO STRIKE AFFIRMATIVE DEFENSES** was hand delivered to the following:

Brent O. Hatch
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and sent by U.S. Mail, postage prepaid, to the following:

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A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

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